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MM 97-122

September 18, 1996


Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: **FM Translator Stations**
W276AQ, Fort Lee, NJ and - 94-6531 TW
W232AL, Pomona, NY 94-0531 TX

Dear Mr. Caton

Submitted herewith on behalf of Universal Broadcasting of New York, Inc. are an original and four copies of a Petition to Deny the application filed by Gerard A. Turro for the assignment of licenses of the above-captioned FM translators.

Very truly yours


Richard A. Helmick

Enclosure

cc w/encl.: Alan Y. Naftalin, Esq.
Harry F. Cole, Esq.
Roy J. Stewart, Esq.
Norman Goldstein, Esq.
Stephen Barone
Charles W. Kelley, Esq.



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SEP 18 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE

Federal Communications Commission

In re Application of

GERARD A. TURRO
FM Translator Stations W276AQ, Fort
Lee, NJ, and W232AL, Pomona, NY

For Assignment of Licenses

MM 97-122

File Nos.

To: Chief, Mass Media Bureau

PETITION TO DENY

Universal Broadcasting of New York, Inc. ("Universal"), permittee of AM Broadcast Station WVNJ, Oakland, New Jersey, through its counsel and pursuant to Section 73.3584 of the Commission's Rules, hereby petitions to deny an application of Gerard A. Turro ("Turro"), originally filed on September 6, 1996, but, due to insufficient filing fee, re-filed on September 12, 1996, seeking Commission consent for the assignment of the licenses of FM Translator Stations W276AQ, Fort Lee, New Jersey, and W232AL, Pomona, New York, to Press Broadcasting Company, Inc. ("Press"), licensee of Stations WBUD(AM) and WKXW(FM), Trenton, New Jersey, WBSS-FM, Millville, New Jersey, WTKS-FM, Cocoa Beach (Orlando), Florida, and WKCF(TV), Clairmont (Orlando), Florida. In support of such petition, the following is set forth.

1. **Introduction.** The above-captioned FM translator stations ostensibly rebroadcast the signal of Station WJUX(FM), 99.7 MHz, Monticello, New York; the licensee of Station WJUX is Monticello Mountaintop Broadcasting, Inc., owned 100% by Wesley R. Weis an associate and former business partner of Turro. Turro, pursuant to a network agreement, produces all the programming broadcast by WJUX at a studio in Dumont, Bergen County, New Jersey; such

programming is then transmitted by conditioned telephone lines a distance of over 60 miles to WJUX, a 6 kW ERP Class A FM station licensed to serve Monticello, New York. The WJUX signal is purportedly received off air some 50 miles south of WJUX by FM Translator Station W232AL, Pomona, New York, a 3 watt facility, which, in turn, relays the WJUX signal 20 miles southwest to FM Translator Station W276AQ, a 34.5 watt facility serving Fort Lee and surrounding Bergen County, New Jersey.

2. As Turro's above-captioned FM translator stations serve areas far removed from the protected 1.0 mV/m contour of WJUX, Section 74.1232(e) of the Rules precludes Turro from having any connection or relationship with WJUX; for that reason, the Commission staff, by letter dated April 5, 1996, directed Turro, on or before June 4, 1996, to either divest his programming relationship with WJUX or divest the above-captioned translator stations.^{*/}

3. Universal has consistently taken the position that, based on matters raised in Universal's February 15, 1995 complaint^{**/} to the Mass Media Bureau's Complaints and Investigations Branch alleging illegal operations of the above-captioned translator stations in

^{*/} By letter dated June 5, 1996, the Commission staff extended the time for Turro to continue his current programming relationship with WJUX and ownership of the above-captioned FM translators until such time as the Commission had an opportunity to evaluate an application, filed on May 30, 1996, to assign the translator licenses from Turro to Stephen M. Gansler, proposed trustee of the Gerard A. Turro Trust. By Memorandum Opinion and Order (DA96-1292), released August 13, 1996, the Commission staff concluded that the proposed assignment of the translator licenses to Gansler failed to comply with the staff's April 5, 1996 directive. Accordingly, the staff directed Turro to inform the Commission within 10 days of receipt of the Commission's August 13, 1996 Memorandum Opinion and Order as to what steps he would undertake to effect compliance with the Commission's directive and its rules. By letter dated August 23, 1996, Turro notified the Commission staff that he would be filing an application to assign the translator licenses to Press.

^{**/} Universal's February 15, 1995 complaint is hereby incorporated by reference for purposes of the instant petition.

association with Station WJUX, Turro does not possess the character qualifications to remain the licensee of the above-captioned translator stations. Moreover, inasmuch as the programming broadcast by WJUX consists, in large part, of news, weather, PSAs and commercial spots directed to Bergen County, New Jersey, and wholly outside the WJUX service area, Turro's translator stations are indirectly originating programming; this contrivance, whereby the primary station's programming is intended to serve the W276AQ service area and not the primary station's service area, is a perversion of the intended purpose of both primary broadcast and translator facilities and, per se, contrary to the public interest, convenience and necessity as it is tantamount to a de facto reallocation of the WJUX channel allocation from Monticello, New York to Fort Lee, New Jersey.

4. Given the fact that Turro's character qualifications are in issue and the above-captioned translators are being operated in a manner contrary to Commission rules and policies, the Commission staff's directive of April 5, 1996 that Turro either divest his programming relationship with WJUX or divest the above-captioned translator station licenses is fundamentally flawed and ill-advised because it addresses neither of these issues. Indeed, the Commission's staff directive has only served to encourage Turro to filing bogus and deficient applications to assign the above-captioned translators (including the instant application), thereby further prolonging his ongoing violations of Commission rules and policies.

5. **Turro's Character Qualifications.** On February 15, 1995, Universal filed a complaint against Turro and WJUX under a confidentiality request but, nonetheless, Turro was able to obtain access to the complaint and make a copy of it. Included in the complaint was an engineering report of Cohen, Dippell and Everist which established, through measurement data, that FM Translator W276AQ was originating, not rebroadcasting, 100% of its program transmissions in

violation of Section 74.1231(g) of the Commission's Rules which generally limits program origination by FM translators to 30 seconds per hour in order to solicit or acknowledge contributions to defray expenses of operating the translators. Universal's consultants concluded that the high quality signal being originated by FM Translator W276AQ ruled out any possibility that the signal of Station WJUX was being rebroadcast either through direct off-air reception of that station or by relay of the WJUX signal by Translator Station W232AL, Pomona, New York; the measurement data indicated that the WJUX programming was being directly fed to W276AQ from Turro's Dumont, New Jersey studio via either microwave or telephone land line under the guise of off-air reception. Indeed, in one instance where Station WJUX was off the air and unable to originate programming, W276AQ continued to originate programming under the guise that it was being received off air and rebroadcast.

6. On June 21, 1995, the Mass Media Bureau's Complaints and Investigations Branch sent detailed questionnaires to both Turro and Station WJUX concerning the matters raised in Universal's February 15, 1995 complaint; before sending those letters out, Universal was informally advised by the Commission staff that the New York Field Office had confirmed, through both announced and unannounced inspections, that W276AQ was indeed originating the WJUX programming, and not rebroadcasting it, a clear violation of Commission rules. Turro, in his July 27, 1995 response to the staff's questionnaire categorically denied that W276AQ had ever originated the WJUX programming; Turro maintained that, until approximately January 10, 1995, W276AQ received the programming of WJUX, a 6 kW station located approximately 100 km (62 miles) north of the W276AQ transmitter site, directly off air and that, subsequent to that date, W276AQ received the WJUX programming via W232AL, Pomona, New York.

7. Whether Turro operated the above-captioned translators in violation of Commission's rules and policies and whether he lied to the Commission staff in an effort to cover up such violations, must be resolved in Turro's favor before the Commission can permit him to assign the translator licenses. See, e.g., Stockholders of CBS, Inc., 1CR 1114 (1995); FM Broadcasters of Douglas County, 10 FCC Rcd 10429, 1 CR 772 (1995). Moreover, Section 309 of the Communications Act of 1934, as amended, requires that the Commission find that there are no substantial and material questions of fact and that a grant of Turro's assignment application would be consistent with the public interest, convenience and necessity.

8. Universal is confident that the Commission, based on the evidence which it has had in its possession for almost two years will ultimately find that (a) Turro is unqualified to remain a Commission licensee and does not possess the character qualifications to assign the above-captioned translator licenses and (b) Turro's programming of WJUX to primarily serve the needs of Bergen County, New Jersey and not the needs of the WJUX service area is tantamount to a de facto reallocation of the WJUX frequency from Monticello, New York to Fort Lee, New Jersey. The Commission's tardiness in resolving Universal's complaint, however, especially given the clear and ongoing violations of its rules and policies and the obvious adverse economic impact such illegal operations have on WVNJ, is unconscionable and violative of Universal's due process rights.

9. **Eligibility of Press.** Press is the licensee of Stations WBUD(AM) and WKXW(FM), Trenton, New Jersey, serving Central New Jersey, and WBSS-FM, Millville, New Jersey, serving Southern New Jersey; the above-captioned translators provide service to Northern New Jersey, i.e., areas not currently being served by Press' broadcast stations. Section 74.1232(d) of the Commission's Rules, generally allows a commercial FM broadcast station licensee to own an FM

translator only when the translator's protected coverage area is entirely within the primary station's protected coverage area; however, the above-captioned translator stations serve areas well outside of the protected coverage areas of Stations WKXW and WBSS-FM.

10. The Commission's Rules recognize that there is a substantial potential for abuse unless full service FM station licensees are limited to operating FM translator stations for service to areas wholly within the protected contour of the primary station; otherwise, one primary station could request FM translators as part of a reciprocal service agreement with another primary FM station whereby each primary station seeks a translator authorization in order to rebroadcast the other station's signal. FM Translator Stations, 73 RR2d 722, 727 (1993). Universal submits that Press is ineligible to be the licensee of the above-captioned translators as those translators provide service to areas beyond the protected contours of Stations WKXW and WBSS-FM and, for that reason alone, the above-captioned application must be either denied or dismissed.

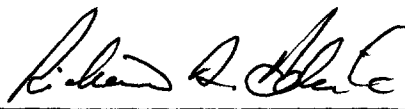
11. Moreover, Universal notes that the Asset Purchase Agreement submitted at Exhibit 1 of the application does not contain any of the referenced schedules; accordingly, it is not possible to determine how the \$1.5 million purchase price has been allocated among the assets which Press is acquiring. Universal submits that a \$1.5 million purchase price for two FM translators is absurd on its face unless Press is also acquiring Turro's programming service or some other commitment on the part of Turro to continue the current illegal scheme between WJUX and the FM translators. Universal need not speculate as to the details of the purchase agreement between Turro and Press; suffice it to say that Press has not provided sufficient information to the Commission to establish that it is even eligible to be the licensee of the above-captioned translator stations.

12. **Conclusion.** Turro has brought political pressure to bear on the Commission to either ignore its rules and policies or permit some accommodation which would allow Turro to continue to program the translators as they are currently being programmed, thereby preserving the program origination service which he is currently providing to Bergen County, New Jersey in clear violation of Commission rules and policies. Turro, in essence, is using the above-captioned translator stations as low power FM stations to originate programming to serve areas well beyond the protected contour of WJUX.

13. Accordingly, it is long past time for the Commission to acknowledge that there is no method whereby the illegal operations of Translator Stations W276AQ and W232AL in conjunction with Station WJUX can be made legal. Turro has constructed this illegal artifice in an attempt to evade Commission rules and policies and now he is hoist with his own petard. The Commission should deny and/or dismiss the application to assign the above-captioned translator licenses from Turro to Press and should forthwith order those translator stations to cease operation and initiate forfeiture and license revocation proceedings against both Turro and Station WJUX.

Respectfully submitted

UNIVERSAL BROADCASTING OF NEW YORK, INC.

By: 

Richard A. Helmick

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Its Attorneys

September 18, 1996

CERTIFICATE OF SERVICE

I, Jovana M. Cooke, a secretary in the law firm of Cohn and Marks, hereby certify that I have, this 18th day of September, 1996, sent by U.S. mail, postage prepaid, or by hand delivery, as indicated, the foregoing **PETITION TO DENY** to the following:

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